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THE DUTY OF THE BAR.

ADDRESS DELIVERED TO THE BAR ASSOCIATION OF THE SIXTEENTH
JUDICIAL CIRCUIT BY THE RETIRING PRESIDENT, HON. R.
GORDON FINNEY, OF ALEXANDRIA COUNTY, VA.

In addressing you today I do so through no especial desire on my part but due solely to the provisions of our constitution which require the retiring president of our association at each annual meeting to address you on some legal subject. I should indeed be very desirous of addressing this association did I believe that any address from me would prove of benefit to the members of the association, but it is a matter of embarrassment to me to be required to do so when I have in mind the so able and brilliant addresses made by my predecessors and a full realization of how far short of the mark set by them must of necessity be any words which may come from me. One consideration indeed makes my task easier because it is not expressed or necessarily implied in our constitution that I shall speak on any subject about which I may know the most, but that I may select a topic upon which my ignorance may be the least displayed. And for this reason I have not taken as a topic a strictly legal one, but following the precedent set by my immediate predecessor in office in his able address "The Ideal Judge," I have determined to address you on a subject closely related thereto, to wit "The Duty of the Bar."

And in treating of this subject it is not my intention to speak on questions of legal ethics as applied to our practice, which have been so ably outlined through a special committee of this association, which are so thoroughly impressed on the student of the law preparatory to his admission to the Bar and concerning which there is such a wide divergence of opinion among those of large experience before the Bar. I deem it unnecessary to speak on this vital point of our profession, because the lawyer who holds his profession in honor needs, in his dealings with the courts, his clients and his fellow-lawyers, no mentor other than his conscience, while to the lawyer who looks upon his profession merely as a sordid means of a livelihood or an instrument through which, by superior cunning, he may trap the unwary to his financial bene-

fit, no considerations of legal ethics will serve to change the trend of his practice.

But I shall speak of what I consider the duty of the Bar in the great services to be performed by it on behalf of the public, first in the line of political activity, and secondly with reference to reform in legal procedure. I treat of these subjects together because it is largely through efforts in political matters that the second of these important questions may be the better handled. In urging members of the Bar to take an active interest in politics, I speak in the broadest sense in which the word may be used; not that the lawyer shall of necessity offer himself for office, the holding of which is sometimes to his great financial detriment, but that he shall become a leader in advanced ideas of government, and through his standing in the community, and with especial familiarity with conditions, aid in the election to office of men who will be faithful to the trust reposed in them, and who will, in turn, use their efforts to better the conditions of the great body of the people. The lawyer is peculiarly well fitted for leadership in this regard, and a proper use of his influence may largely determine the future of his community. But especially do I deem it to be the duty of the lawyer, both as an individual and through the medium of associations such as ours, to use every effort in securing at the hands of Legislatures, both state and national, remedial legislation, and the enactment of laws which will make possible necessary reforms in our court procedure. In direct ratio to the work done by the Bar in this respect will the Bar become an influence for good, and it is due to the failure of the Bar to properly appreciate its responsibilities in this respect that its influence in framing legislation has become a negligible quantity.

Probably in no State in the Union have technical legal procedure and practice had so long a life as in the State of Virginia, and possibly in no State in the Union has the Bar been so slow to recognize the great public demand for legal reforms and of remedial legislation to meet the ever-growing necessities of our people. The English colonists who settled at Jamestown more than 300 years ago, bringing with them the great English common law, would in no way be astonished at any radical changes which have taken place in our practice, but rather might vent their surprise

that their descendants, under the changed conditions of today, should not have had their legal machinery keep pace with the progress made along other lines, and it is indeed questionable whether the lawyers who accompanied this famous expedition could not even now come into our courts and handle a cause without the necessity of securing additional counsel from the lawyers of the present day in our State.

Some there may be who will argue that it is well that this be so; that the law and the practice should be unchanging, and this might indeed be true were the laws unchanging and the conditions the same then as now; but the law itself is constantly changing, not alone from new enactments but from judicial constructions placed upon existing laws, and old theories of the law and old conditions must give place to the new. Under the discoveries made by science, even the navigation of the air may well be deemed assured, and the old doctrine that "he who owns the soil owns to the sky" must give way to the rights of the public, under proper restrictions, to an unlimited use of the air. And as in this case so in thousands of others too innumerable to mention. But still musty precedents, often the mistakes of ignorant judges, are quoted at length to sustain contentions in our courts when the conditions which produced them, even when correct, have long since ceased to exist, and these precedents are used to defeat the ends of justice and of equity between litigants.

The tendency of the Bar to rely on technical legal objections not going to the merits of a cause produces in itself a delay in determining the rights of litigants and has a tendency to cause the public to view with distrust our profession and the courts; to look upon our courts not as a forum where the rights of litigants may be determined according to law and equity but rather as a gambling hall in which the game shall go to the most skilful player, and that his cause is most just who holds the longest purse. This dissatisfaction, long concealed, is daily becoming more and more apparent and is evidenced by the distrust in which our courts are being held by laymen, and by the publications relating to a corrupt judiciary so frequently found in the magazines and the press. That the public have any grounds for such accusations rest largely with the Bar which fails or refuses to

lend its aid to remedy such situations. Whenever there may be found a corrupt judge—and I thank God they are few in number—there will be found some interest profiting thereby through the services of a corrupt attorney, without whose assistance the corrupt judge is almost powerless.

And these technical legal objections, in addition to delaying a trial also add greatly to the cost of litigation without any corresponding benefit, and it must appear to the public senseless indeed to see two able lawyers addressing a court to secure a determination as to whether service of process on a corporation has been properly returned, or the words “at least” shall appear in an affidavit for attachment, with the litigants themselves in court and when full justice may be done upon a trial of the cause upon its merits.

In recognition of the necessity for reform in court procedure, to provide for a more speedy trial of cause and with less expense to litigants, the Supreme Court of the United States has recently made changes of an almost startling nature in the equity practice before the United States courts, and one of the most pleasing statements I have ever heard from the lips of the court was to hear a judge of a United States court announce on a hearing that demurrers had been done away with in the United States courts—would that a similar situation might arise in our State courts, and the defendant put to answer upon the bill.

In our own legislature we see farmers and business men striving to simplify our court procedure, to eliminate purely technical pleading not going to the merits of a cause, but interposed merely for delay and in an effort to wear out an antagonist, and we find them receiving little or no assistance from our Bar associations from whom they have a right to expect aid. We find attending these sessions of the legislature, associations of officials of all kinds to supervise legislation affecting them personally but the great legal ability of the State is conspicuous by its absence.

Our next legislature will contend with a question of vital importance to the entire State “the revision of our tax laws.” They are being assisted by the business men over the entire State. Without the assistance of the Bar they will but grope in darkness and possibly bring forth legislation which shall make our

last condition worse than the first. What assistance will they receive from the Bar?

The Bar associations of this State could do a world of good were they each to appoint a committee on legislation and on reform in court procedure to co-operate with similar committees appointed by the State Bar Association in advising our legislature on the necessity and constitutionality of remedial legislation and to co-operate with our courts in the adoption of rules to simplify our practice and to expedite causes. Until our associations shall recognize this duty, and those appointed on such committees shall give their time thereto, our Bar associations fill no need of the community, and will be, as in the past, only an occasion for the meeting of our members in amity and concord. I should be the last to decry this, but I urge upon this association and on each member, that action should be taken upon these larger, more important and almost vital questions.